UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29

CROSSINGS RECOVERY SYSTEMS, INC.
D/B/A CROSSINGS RECOVERY CENTERS AND
CROSSINGS OF LONG ISLAND, INC.[1]
Employer

and Case No. 29-RC-10163

AMALGAMATED LOCAL 298, INTERNATIONAL
UNION OF ALLIED, NOVELTY AND PRODUCTION
WORKERS, AFL-CIO
Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, herein called the Act, as amended, a hearing was held before Jonathan Chait, a Hearing Officer of the National Labor Relations Board, herein called the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The Hearing Officer's rulings made at the hearing are free from prejudicial error and hereby are affirmed.

2. The parties stipulated that Crossings Recovery Systems, Inc. d/b/a Crossings Recovery Centers ("Employer"), a domestic corporation, with its principal office and place of business located at 450 Waverly Avenue, Suite 5, Patchogue, New York, and with a subsidiary corporation called Crossings of Long Island, Inc., located at 5225-40 Route 347, Building 7, Port Jefferson Station, New York, herein called its Port

[1] The name of the Employer is amended sua sponte.

Jefferson Station facility, and with other facilities in Nassau and Suffolk counties, is in the business of providing drug and alcohol rehabilitation and counseling. During the past twelve months, which period is representative of its annual operations generally, the Employer, in the course and conduct of its business operations, received gross annual revenues valued in excess of $250,000. Also during the past twelve months, the Employer purchased and received at its Port Jefferson Station facility, goods, supplies and materials valued in excess of $5,000 from suppliers located within New York State, which suppliers, in turn, purchased and received such goods, supplies, and materials directly from points located outside New York State.

Based on the stipulation of the parties, and the record as a whole, I find that the Employer is engaged in commerce within the meaning of the Act, and that it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The labor organization involved herein claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.

5. Amalgamated Local 298, International Union of Allied, Novelty and Production Workers, AFL-CIO, herein called the Petitioner, seeks to represent a unit of all full-time and regular part-time counselors, clerical employees, and managed care coordinators employed by the Employer at its Port Jefferson Station facility, but excluding all directors, managers, guards, registered nurses and other professional employees as defined in the Act, and supervisors as defined in the Act.

Positions of the Parties

The Employer takes the position that anything less than an employer-wide nonprofessional unit would be inappropriate. In addition, the Employer argues that the courier, who reports to the Port Jefferson Station facility, should be included in the bargaining unit. The Petitioner takes the position that the petitioned-for single-facility unit is appropriate, and that the courier should be excluded.

Apart from the courier, however, the parties reached agreement regarding the unit status of all other Port Jefferson Station personnel, stipulating that the facility is staffed by the following:

Position	Number Holding Position	Status
Director	1	2(11) Supervisor (excluded)
Senior Counselor	1	2(11) Supervisor (excluded)
Psychologist	1	2(12) Professional (excluded)
Psychiatric Nurse Practitioner	1	2(12) Professional (excluded)
Managed Care Coordinator	1	Include in Unit
Secretaries (Full-Time)	3	Include in Unit
Counselors (1 Full-Time, 8 Part-Time)	9	Include in Unit
Courier (Part-Time)	1	Disputed

The parties further stipulated that counselors holding Master's in Social Work (M.S.W.) degrees are not professionals as defined in Section 2(12) of the Act, and that they perform the same work as the Employer's other counselors, and they should be included in the unit.

The Hearing

The hearing in the instant case was held on March 1, 2004. Both parties had the opportunity to examine and cross-examine witnesses, introduce documents, and file briefs. The Employer's witness was Brian Logan, who has been the program director at the Port Jefferson Station facility since January 2, 2004. Previously, from January 2001 through 2003, he was the program director for the Islip Terrace facility. The Petitioner did not call witnesses.

At the hearing, the Employer attempted to offer into evidence the transcript and exhibits in Case No. 29-RC-10145, involving the same parties but a different facility of the Employer. The Hearing Officer rejected the offer. The Employer then filed a special appeal of the Hearing Officer's ruling, in which he was joined by the Petitioner. I denied the special appeal on its merits, noting that the record in Case No. 29-RC-10145, pertaining to the Employer's Islip Terrace facility, would not adequately address all the issues raised by the instant case, involving the Employer's Port Jefferson Station facility. However, to the extent that the record in Case No. 29-RC-10145 contains evidence relevant to the instant case, I encouraged the parties to enter into factual stipulations regarding such evidence. Further, my ruling on the special appeal does not preclude me from taking administrative notice of the prior case.

The Employer and Petitioner subsequently executed a stipulation, stating that "The facts as testified to in Case No. 29-RC-10145 are the same facts as exist in the instant case, No. 29-RC-10163." The Hearing Officer agreed to receive this stipulation into evidence as Board Exhibit 5, but only with respect to facts applicable to both the Islip Terrace and Port Jefferson facilities, to which the parties would be willing to

stipulate on the record. In accordance with his ruling, the Hearing Officer solicited several factual stipulations.

The Employer submitted a brief, and the Petitioner submitted a letter brief. Relying on Board Exhibit 5, the Employer's brief cites to the transcript pages and exhibits in Case No. 29-RC-10145,[2] rather than to the record in the instant case.

Summary of Findings

In Case No. 29-RC-10145, I found that the petitioned-for single-facility unit, comprised of counselors and secretaries at the Employer's Islip Terrace facility, was an appropriate unit for bargaining, with the inclusion of the managed care coordinators, as urged by the Employer. In light of the autonomy exercised by facility-level supervisors, the minimal amount of interchange among employees at the various facilities, and the substantial distances among the facilities, the evidence in Case No. 29-RC-10145 did not support the Employer's contention that a five-facility unit was the only appropriate unit.

In the instant case, the testimony provided by the Employer's witness, regarding the Port Jefferson Station facility, did not vary greatly from the testimony in Case No. 29-RC-10145, regarding the Islip Terrace facility. Thus, the record evidence in the instant case does not justify or support a different conclusion from that reached in the prior case. Accordingly, I have concluded that a single-facility unit is appropriate here, as in Case No. 29-RC-10145.

However, the instant record supports the Employer's contention that the courier based in Port Jefferson must be included in the petitioned-for bargaining unit, for the reasons discussed *infra* page 13-14.

[2] *Brief of Employer* at 3 n. 1.

Appropriateness of Single-Facility Port Jefferson Station Bargaining Unit

It is well-established that "there is nothing in the statute which requires that the unit for bargaining be the *only* appropriate unit, or the *ultimate* unit, or the *most* appropriate unit; the Act only requires that the unit be 'appropriate.'" *Morand Brothers Beverage Co.*, 91 NLRB 409, 418 (1950)(emphasis in original), *enf'd on other grounds*, 190 F.2d 576 (7th Cir. 1951). Since both single-facility units and employer-wide units are specifically set forth in Section 9(b) of the Act, both are presumptively appropriate. *See Rental Uniform Service, Inc*., 330 NLRB No. 44 (1999); *Overnite Transportation Co*., 322 NLRB 723 (1996); *Owens-Illinois Glass Company*, 136 NLRB 389 (1962). A party seeking to rebut the presumption that a single-facility unit is appropriate must show that the single facility "has been so effectively merged into a more comprehensive unit, or is so functionally integrated, that it has lost its separate identity." *New Britain Transportation Co*., 330 NLRB 397 (1999)(single facility presumption not rebutted). In resolving unit issues pertaining to multilocation employers, the Board considers the geographical relationship among the facilities involved; the functional integration of operations; the degree of employee interchange; the similarity of employee skills, functions, working conditions, and benefits; shared supervision; the extent of local autonomy, balanced against the extent of centralized control over daily operations, personnel and labor relations; bargaining history, if any exists; and the extent of organization. *See, e.g., Novato Disposal Services, Inc*., 328 NLRB No. 118 (1999); *R & D Trucking*, 327 NLRB 531 (1999); *Passavant Retirement and Health Center*, 313 NLRB 1216 (1994); *Globe Furniture Rentals, Inc*., 298 NLRB 288 (1990); *Twenty-First Century Restaurant of Nostrand Avenue, Licensee of McDonald's Corporation*, 192

NLRB 881 (1971); *Davis Cafeteria,* 160 NLRB 1141 (1966); *Sav-On Drugs, Inc.*, 138 NLRB 1033 (1962); *Barber-Colman Company*, 130 NLRB 478 (1961).

Geographical Relationship among the Facilities

The parties stipulated that the Port Jefferson facility is 15 to 20 miles from the Employer's main office in Patchogue, New York. The record in Case No. 29-RC-10145, involving the same parties, revealed that the Employer operates five separately incorporated outpatient facilities for the treatment of alcoholism and other forms of substance abuse, located in Patchogue, Port Jefferson Station, Islip Terrace, Deer Park and West Hempstead, New York. The Employer's chief executive officer ("CEO") testified that the Islip Terrace facility, at issue in that case, is either 15 or 25 miles from the Patchogue facility, 40 miles from the West Hempstead facility, and 10 miles from the Deer Park facility.

Employee Interchange

Logan testified that within the past year, before he became the director of the Port Jefferson facility, a counselor employed at that facility "went out to do some hours" at the Patchogue facility. Logan did not know when this occurred, or how long the counselor was in Patchogue. He did not know of any permanent transfers among the facilities, or of counselors at different facilities discussing cases with one another.

Similarity of Employee Skills and Functions

Logan contended that there is no difference in the skills or functions of employees at the Islip Terrace and Port Jefferson facilities, although the Port Jefferson facility, unlike the Islip Terrace facility, has a mentally ill, chemically addicted ("MICA") program.

Similarity of Working Conditions and Benefits

The parties stipulated that benefits such as health insurance coverage are uniform. Further, Logan testified that personnel procedures and working conditions at the Port Jefferson and Islip facilities are the same.

Shared Supervision

The record does not indicate that employees at the various clinical facilities share common supervision.

Extent of Local Autonomy

Logan testified that he is responsible for ensuring that patients at the Port Jefferson Station facility receive appropriate placements and are receiving the proper level of care. As the program director for the Port Jefferson facility, he oversees all of the employees at that facility. Reporting directly to Logan are the senior counselor, who supervises all the counselors at Port Jefferson, and the office manager, who supervises all the secretaries at the facility.

Logan acknowledged that employees request sick leave and vacation time directly from him, and that he is authorized to grant time off, without needing permission from higher management. In addition, Logan has independent authority to decide how to handle emergency situations involving staff misconduct. For example, two years ago, as director of the Islip facility, Logan broke up a dispute between two counselors by sending one of them home to "cool off."

Although completing written performance appraisals is part of his job description, Logan claimed that his "boss" has never asked him to do so. Rather, the director and

senior counselor evaluate counselors informally, by observing them as they run their groups.

Hiring

According to Logan, New York State regulations set a maximum case load of 35 patients per counselor, and recommend that a therapy group be no larger than 15 patients. When these levels are exceeded, the program director contacts the executive director, to request permission to hire new counselor(s). The executive director, in turn, requests authorization from the CEO. Upon obtaining the CEO's authorization, the program director and senior counselor then interview prospective counselors and recommend a candidate to the CEO.

A similar procedure is followed with respect to the hiring of clerical employees. The program director and office manager do all the interviewing and recruiting, but have to seek authorization from the senior office manager, executive director and CEO. Similarly, applicants for the position of managed care coordinator are interviewed by the program director and managed care director. Although the CEO, executive director and senior office manager do not sit in on job interviews conducted by the program director, the CEO has never rejected Logan's hiring recommendations.

Training

Logan stated that he and the senior counselor train new counselors at the Port Jefferson site with regard to New York State regulations, paperwork, policies and procedures. Further, each separate facility provides in-service training in specific competencies, such as counseling techniques and group skills. Joint in-service training is sometimes provided at the Patchogue facility, for counselors employed at all five

facilities. Logan recalled that this had occurred once within the past year. Attendance at the program was voluntary.

Extent of Centralized Control over Daily Operations, Personnel and Labor Relations

The parties stipulated that the Employer's payroll, personnel and billing functions are centralized, and that the Employer's top management officials work at the Patchogue facility. Logan testified that the CEO has sole discretion to set employees' rates of pay and benefits, and the amount of paid time off.

With regard to raises, Logan testified that an employee desiring a raise would have to approach either the program director or the senior counselor at his or her facility. The director would then bring the request to the executive director, CEO, or both. The CEO would make the final decision. Logan did not recall how many times he had requested a raise on behalf of a subordinate, but he testified that such requests have usually been denied.

Logan further testified that in his experience, there have been no layoffs, recalls from layoff, disciplinary actions or discharges. However, he thought that in the event that any of these personnel actions became necessary, the procedure would be for him to make a recommendation to the executive director, who would then convey it to the CEO. The CEO would make the ultimate decision.

Functional Integration of Operations

The Employer did not provide evidence that its core functions, such as alcoholism treatment and group therapy, are functionally integrated among its five facilities.

Extent of Organization

The Petitioner's organizing campaign only encompassed the petitioned-for employees.

Bargaining History

There is no bargaining history involving the Employer's employees.

Discussion and Conclusion

The record evidence in the instant case does not establish that the Employer's Port Jefferson Station facility has been so effectively merged into a more comprehensive unit, or is so functionally integrated, that it has lost its separate identity. Rather, the record reflects that the Port Jefferson facility operates autonomously with respect to the Employer's core function of providing alcoholism treatment services. The program director for the Port Jefferson Station facility, Brian Logan, testified that he is responsible for patient care at the Port Jefferson Station facility, and that he oversees the facility's employees. The counselors and secretaries at Port Jefferson report directly to facility-level supervisors, who report directly to Logan. Employee training, for the most part, is conducted at the facility level. Within the past year, Logan could think of only one training program that was made available to employees of multiple facilities, on a voluntary basis. The only other evidence of interchange revealed by the instant record is that within the past year, one Port Jefferson counselor performed an unknown number of "hours" at the Patchogue facility. This evidence does not alter the conclusion I reached in Case No. 29-RC-10145, that there is minimal evidence of interchange or contacts among employees at the Employer's five clinical facilities.

In addition, although the Employer's CEO has sole discretion over wage and benefit issues, the record reflects that Logan has independent authority to grant time off requests, and to send employees home in an emergency. When additional personnel are needed at the Port Jefferson Station facility, the initial determination is made by Logan. All recruiting and interviewing is conducted by Logan and facility-level supervisors, or in the case of the managed care coordinator, by Logan and the managed care director. The CEO has always followed Logan's hiring recommendations. Discipline, discharges, layoffs, and recalls from layoff, have never occurred during Logan's tenure with the Employer, and thus, the record is inconclusive with regard to Logan's potential role in such personnel actions.

In view of the autonomous operation of the Port Jefferson facility, its separate incorporation, the lack of employee interchange, the supervision of employees by facility-level supervisors, and the geographical distances among the facilities, I conclude that the petitioned-for single-location Port Jefferson Station bargaining unit is appropriate. Although the employees at the five clinical facilities have common skills, functions, working conditions and benefits, and payroll, personnel, labor relations and billing functions are centralized, these factors, alone, are insufficient to establish that the Port Jefferson Station employees have been so effectively merged into an Employer-wide unit as to have lost their separate identity.[3]

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[3] *St. Luke's Health System, Inc.,* 340 NLRB No. 139 (2003), cited by the Employer, is distinguishable from the instant case, in that *St. Luke's* involved extensive evidence of both permanent and temporary interchange. The Employer's reliance on *Stormont-Vail Healthcare, Inc*., 340 NLRB No. 143 (2003) is similarly misplaced, in that the single-facility presumption did not enter into that decision. Rather, the Board in *Stormont-Vail* held that a multi-facility unit found appropriate by the Regional Director arbitrarily excluded facilities that were "well integrated with the rest of the Employer's centralized system." *Stormont-Vail,* 340 NLRB No. 143, slip op. at 4-5. Factors such as geographical proximity, interchange, and administrative/supervisory groupings, were not adequately weighed. *Stormont-Vail,* 340 NLRB No. 143, slip op. at 3-5. *See Brief of Employer* at 11-12.

Courier at Port Jefferson Station Facility

Logan testified that the courier uses his own vehicle[4] to bring supplies from the basement storeroom at Port Jefferson Station to the facilities in Patchogue, Islip Terrace, Deer Park and West Hempstead. The courier transports employee paychecks from the payroll department in Patchogue to the other four facilities, and conversely, he collects patient copayments from the other four facilities for delivery to Patchogue. When a patient transfers to a new facility, the courier brings the patient's file to the new facility.

The record further disclosed that the courier works Mondays, Wednesdays and Fridays, from 8:30 a.m. until 1:30 or 2:00 p.m. He reports to the office manager in Port Jefferson Station, who also supervises the three secretaries in the petitioned-for unit. Each morning, the Port Jefferson office manager gives the courier a list of items that have been requested by the office managers at the other facilities. The courier then gathers the items for delivery, remaining at the Port Jefferson Station facility for about an hour. At the end of his shift, after delivering the items to the office managers at the other facilities, he returns to the Port Jefferson facility and spends "a little time" there. His interactions with other employees consist of saying "hello." The record does not disclose the courier's rate of pay, and Logan did not know whether the courier receives different benefits from other employees.

Discussion and Conclusion

The "community of interest" criteria applied by the Board in making unit determinations include "distinctions in skills and functions of particular employee groups, their separate supervision, the employer's organizational structure and

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[4] Neither party alleges that the courier is an independent contractor.

differences in wages and hours, as well as integration of operations, and employee transfers, interchange and contacts," and fringe benefits. *Atlanta Hilton and Towers*, 273 NLRB 87, 90 (1984). Although most of these factors do not appear to apply to the courier, he reports to the Port Jefferson Station facility and is under the same supervision as the secretaries at that facility. With his inclusion, the bargaining unit would encompass all non-professional employees at the Port Jefferson Station facility, a unit that is presumptively appropriate.

The Board generally seeks to avoid creating residual units, particularly through the exclusion of employees whose inclusion would result in a presumptively appropriate unit. *Huckleberry Youth Programs*, 326 NLRB 1272, 1274 (1998). In the instant case, if the courier is excluded, the residual unit at the Port Jefferson facility would consist of the courier and the two professional employees. An election in such a unit could result in the two professionals voting to opt out of the unit, pursuant to *Sonotone Corp*., 90 NLRB 1236 (1950) and Section 9(b)(1) of the Act. This would result in a one-person unit, whose certification would be contrary to Board policy, *Mount St. Joseph's Home for Girls*, 229 NLRB 251 (1977), depriving the courier of his rights under Sections 7 and 9 of the Act. For these reasons, and because Petitioner has not articulated any reason for excluding the courier from the unit, I conclude that the courier's inclusion in the unit is warranted.

Summary of Findings

Based on the foregoing, I find that the single-facility bargaining unit sought by the Petitioner, consisting of counselors, clerical employees and managed care coordinators at the Port Jefferson Station facility, is appropriate. Further, I find that the courier at the

Port Jefferson Station facility should be included in the unit. Accordingly, I will direct an election in the following unit, which I find to be appropriate for the purposes of collective bargaining:

> All full-time and regular part-time counselors, clerical employees, managed care coordinators and couriers employed at the Employer's 5225-40 Route 347, Building 7, Port Jefferson Station, New York, facility, but excluding all directors, managers, guards, registered nurses, and other professional employees as defined in the Act, and supervisors as defined in the Act.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether they wish to be represented for purposes of collective bargaining by Amalgamated Local 298, International Union of Allied, Novelty and Production Workers, AFL-CIO. The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit

employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc*., 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, One MetroTech Center North, 10th Floor, Brooklyn, New York 11201, on or before **March 19, 2004.** No extension of time to file this list will be granted except in extraordinary

circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (718) 330-7579 or by electronic transmission at Region29@NLRB.gov. Since the list will be made available to all parties to the election, please furnish a total of **two** copies, unless the list is submitted by facsimile or E-mail, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EST

on **March 26, 2004.** The request may be filed by electronic transmission through the Board's web site at NLRB.Gov but **not** by facsimile.

Dated: March 12, 2004.

___/s/Alvin Blyer_____
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